



SECURITIES AND EXCHANGE COMMISSION
[SEC File No. 270-217, OMB Control No. 3235-0241]

Proposed Collection; Comment Request; Extension: Rule 206(4)-2

Upon Written Request, Copies Available From
Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE
Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 206(4)-2 (17 CFR 275.206(4)-2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) governs the custody of funds or securities of clients by Commission-registered investment advisers. Rule 206(4)-2 requires each registered investment adviser that has custody of client funds or securities to maintain those client funds or securities with a broker-dealer, bank or other “qualified custodian.”¹ The rule requires the adviser to promptly notify clients as to the place and manner of custody, after opening an account for the client and following any changes.² If an adviser sends account statements to its clients, it must insert a legend in the notice and in subsequent account statements sent to those clients urging them to compare the account statements from the custodian with those from the adviser.³ The adviser also must have a reasonable basis, after due inquiry, for believing that the qualified custodian maintaining client funds and securities sends account statements directly to the advisory clients

¹ Rule 206(4)-2(a)(1).

² Rule 206(4)-2(a)(2).

³ Rule 206(4)-2(a)(2).

at least quarterly, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.⁴ The client funds and securities of which an adviser has custody must undergo an annual surprise examination by an independent public accountant to verify client assets pursuant to a written agreement with the accountant that specifies certain duties.⁵ Unless client assets are maintained by an independent custodian (i.e., a custodian that is not the adviser itself or a related person), the adviser also is required to obtain or receive a written report of the internal controls relating to the custody of those assets from an independent public accountant that is registered with and subject to regular inspection by the Public Company Accounting Oversight Board (“PCAOB”).⁶

The rule exempts advisers from the rule with respect to clients that are registered investment companies. Advisers to limited partnerships, limited liability companies and other pooled investment vehicles are excepted from the account statement delivery and deemed to comply with the annual surprise examination requirement if the limited partnerships, limited liability companies or pooled investment vehicles are subject to annual audit by an independent public accountant registered with, and subject to regular inspection by the PCAOB, and the audited financial statements are distributed to investors in the pools.⁷ The rule also provides an exception to the surprise examination requirement for advisers that have custody solely because they have authority to deduct advisory fees from client accounts,⁸ and advisers that have custody solely because a related person holds the adviser’s client assets (or has any authority to obtain possession of them) and the related person is operationally independent of the adviser.⁹

Advisory clients use this information to confirm proper handling of their accounts. The

⁴ Rule 206(4)-2(a)(3).

⁵ Rule 206(4)-2(a)(4).

⁶ Rule 206(4)-2(a)(6).

⁷ Rule 206(4)-2(b)(4).

⁸ Rule 206(4)-2(b)(3).

⁹ Rule 206(4)-2 (b)(6).

Commission's staff uses the information obtained through this collection in its enforcement, regulatory and examination programs. Without the information collected under the rule, the Commission would be less efficient and effective in its programs and clients would not have information valuable for monitoring an adviser's handling of their accounts.

The respondents to this information collection are investment advisers registered with the Commission and have custody of clients' funds or securities. We estimate that 8,057 advisers would be subject to the information collection burden under rule 206(4)-2. The number of responses under rule 206(4)-2 will vary considerably depending on the number of clients for which an adviser has custody of funds or securities, and the number of investors in pooled investment vehicles that the adviser manages. It is estimated that the average number of responses annually for each respondent would be 6,830, and an average time of 0.00524 hour per response. The annual aggregate burden for all respondents to the requirements of rule 206(4)-2 is estimated to be 288,202 hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John Pezzullo, 100 F Street, NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov .

Dated: May 25, 2022

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-11663 Filed: 5/31/2022 8:45 am; Publication Date: 6/1/2022]